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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2876 OF 2006
(for Leave to appeal)
IN
CRIMINAL APPEAL NO. OF 2006

The State of Maharashtra ... Applicant

V/s

Baburao Bhimrao Salunkhe & 5 ors. ... Respondents

Dr. F.R. Shaikh, A.P.P. for the applicant.

Mr. S.S. Salunke for the respondents 1 to 6.

CORAM: D. G. DESHPANDE &
SMT. NISHITA MHATRE, JJ.

DATED: 18TH APRIL, 2007.

P.C.:

1. This is an application by the State for leave to appeal against the acquittal of the six accused respondents from the charges under Sections 147, 148, 149 and 302 read with 34 of the Indian Penal Code.

2. We have heard the learned A.P.P. for the State and the advocate for the accused respondent Nos. 1 to 6.

3. According to the prosecution case, PW-6 Mahadeo is the eye witness. His son was killed. According to him,

all the accused came to the place of incident. Accused No.1 gave blows to the deceased Rajendra by means of sword whereas accused No.2 Nagesh and his brother Yogesh gave blows to the deceased by means of axe and the remaining accused gave fist and kick blows. As per the post-mortem report, Rajendra, the deceased suffered 10 injuries, out of which 9 were C.L.W.s and 10th was contusion on the right hand. The Trial Court acquitted the accused because of this discrepancy. According to PW-8 Mr. Khatavkar, the medical officer, if weapons like sword and axe were used, there ought to have incised wounds and not C.L.W.s because C.L.W.s are possible if the hard and blunt objects are used. The solitary eye witness Mahadeo does not say that blunt object or the axe was used by the other accused. However, there is no recovery of any weapon. No blood stained clothes were recovered.

4. Therefore, we do not find that any interference is called for in the order of acquittal of the accused. Leave refused. The order of acquittal of the accused is, therefore, maintained.

5. Criminal application disposed of accordingly.

(SMT. NISHITA MHATRE, J.) (D.G. DESHPANDE, J.)